

OFFICIAL FILE  
ILLINOIS COMMERCE COMMISSION  
STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ORIGINAL

RURAL ELECTRIC CONVENIENCE COOPERATIVE, )  
CO. and SOYLAND POWER COOPERATIVE, INC. )

vs. )

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY )  
(AMEREN CIPS) )

Complaint Pursuant to Illinois Electric )  
Supplier Act, 220 ILCS 30/1 et seq. )

Docket No. 01-0675

CHIEF CLERK'S OFFICE

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COMMUNICATIONS SECTION

ANSWER

COUNT I

NOW COMES, FREEMAN UNITED COAL MINING COMPANY ("Freeman"), through its attorney, Gary L. Smith, of Loewenstein, Hagen, & Smith, P.C., hereby responds to the Complaint filed by Rural Electric Convenience Cooperative Co. ("RECC"), and Soyland Power Cooperative, Inc., Complainants and states as follows:

1. Admitted.
2. Intervenor moves to dismiss Soyland as a party complainant in this proceeding and the Motion to Dismiss pertains to this allegation.
3. Admitted.
4. Admitted.
5. Admitted.
6. The allegations of paragraph 6 are addressed in Intervenor's Motion to Dismiss.

7. The allegations pertaining to Soyland are addressed in Intervenor's Motion to Dismiss. Intervenor possesses insufficient knowledge to answer the remaining allegations of paragraph 7 and is unable to form a response.

8. The allegations pertaining to Soyland are addressed in the Motion to Dismiss .

9. The allegations pertaining to Soyland are addressed in the Motion to Dismiss.

10. The allegations pertaining to Soyland are addressed in the Motion to Dismiss.

11. Intervenor possesses insufficient knowledge to answer the allegations in paragraph 11 and therefore demands strict proof thereof.

12. Intervenor possesses insufficient knowledge to answer the allegations in paragraph 12 and therefore demands strict proof thereof.

13. A portion of the Freeman Crown 3 Coal Mine is located under the 80 acres comprising the Arnold premises in the south half of the southwest quarter, section 7, township 11, range 5 north of the third principal meridian in Pittman Township, Macoupin County. Intervenor denies that the Freeman Crown 3 Coal Mine "is in the process of" constructing a lime injection air shaft but admits that the Freeman Crown 3 Coal Mine now includes the lime injection air shaft that has been constructed.

14. Intervenor admits the allegations of paragraph 14 and affirmatively states that the lime injection/air shaft is part of the Crown 3 Mine, which the Illinois Commerce Commission authorized AMERENCIPS (CIPS) to serve in Ill.Com.Com. order ESA 187 and RECC v. Ill.Com. Com., 118 Ill.App.<sup>3d</sup> 647 (1983).

#### COUNT II

1-14. Intervenor incorporates answers 1-14 of Count I.

15. Intervenor denies the allegations in paragraph 15.

16. Intervenor admits that CIPS has extended lines to serve that portion of the Freeman Crown 3 Mine load located under the Arnold premises but denies the remaining allegations of paragraph 16.

17. Denied.

WHEREFORE, Intervenor requests that the Commission declare CIPS as the utility lawfully authorized to serve the Crown 3 Mine, that it dismiss Complainants' Complaint, and grant such other and further relief as it deems just.

### COUNT III

1-14. Intervenor incorporates answers 1-14 of Count I.

15. Intervenor admits that it is anticipated that the underground load required by Freeman Crown 3 Mine during the first year of normal operation will require, as determined in accordance with generally accepted engineering practices, a connection to or extension from a 34.5 KV or higher line. Intervenor denies the remaining allegations in paragraph 15.

16. Denied.

17. Intervenor possesses insufficient knowledge with which to admit or deny the first allegation of paragraph 17 and neither admits nor denies the same but affirmatively denies that RECC is entitled pursuant to Section 5 of the Electric Supplier Act to provide all of the electric service to the Freeman Crown 3 Mine lime injection air shaft load located under the Arnold premises.

18. Freeman admits that CIPS has extended lines to serve the Freeman Crown 3 Mine line injection air shaft load located under the Arnold premises but denies the remaining allegations in paragraph 18.

19. Denied.

20. Denied.

WHEREFORE, Intervenor requests that the Commission declare CIPS as the utility lawfully authorized to serve the Crown 3 Mine, that it dismiss Complainants' Complaint, and grant such other and further relief as it deems just.

#### COUNT IV

1-14. Intervenor incorporates answers 1-14 of Count I.

15. Intervenor admits that it is anticipated that the load required by Freeman during the first year of normal operation will require, as determined in accordance with generally accepted engineering practices, a connection to or extension from a 34.5 KV or higher line. Intervenor denies the remaining allegations in paragraph 15.

16. Denied.

17. Intervenor Freeman denies Freeman Crown 3 Mine line injection air shaft underground load is on the Arnold premises and affirmatively states that the line injection air shaft is part of the area comprising Freeman's Crown 3 Mine.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

WHEREFORE, Intervenor requests that the Commission declare CIPS as the utility lawfully authorized to serve the Crown 3 Mine, that it dismiss Complainants' Complaint, and grant such other and further relief as it deems just.

#### COUNT V

1-14. Intervenor incorporates answers 1-14 of Count I.

15. Admitted.

16. Freeman is unable to admit or deny when RECC was providing electric service to the Arnold premises, and affirmatively denies the remaining allegations of paragraph 16.

17. Intervenor admits that the Arnold premises are within the territory delineated by the Service Area Agreement to be served by RECC but denies the remaining allegations of paragraph 17.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

WHEREFORE, Intervenor requests the Commission to declare CIPS as the utility lawfully authorized to serve the Crown 3 Mine and that it dismiss Complainant's Complaint and grant such other and further relief as is deemed just.

## COUNT VI

1-14. Intervenor incorporates answers 1-14 of Count I.

15. Denied.

16. Intervenor admits that it requires lines of 34.5 KV or higher at that portion of the Crown 3 Mine located under the Arnold premises, but denies the remaining allegations of paragraph 16.

17. Denied

18. Denied.

19. Denied.

20. Denied.

WHEREFORE, Intervenor requests that the Commission declare CIPS as the utility lawfully authorized to serve the Crown 3 Mine, that it dismiss Complainants' Complaint, and grant such other and further relief as it deems just.

## COUNTS VII THROUGH XI

Intervenor responds to Counts VII through XI as follows:

Freeman makes no answer to Counts VII-XI and ;moves to strike and dismiss Counts VII-XI in their entirety on the grounds that Soyland does not allege anywhere that "it should be permitted to serve any customer or premises" within the meaning of Section 7 of the ESA and consequently, Soyland has no standing to file a Complaint and the Commission has no jurisdiction to grant any relief to Soyland under the ESA.

WHEREFORE, Intervenor respectfully prays that Counts VII through XI be dismissed with prejudice and for such other and further relief as the Commission deems just.

### AFFIRMATIVE DEFENSE

#### Res Judicata/Collateral Estoppel

1. In an Order entered by this Commission in ESA 187, February 17, 1982, the Commission authorized CIPS to provide electric service to Freeman's underground coal mine known as Crown 3. The Order furthermore states:

The mine owns 810 acres of surface area and has acquired mineral rights and approximately 17,500 subterranean acres. The mine's surface facilities are currently in place and the mine anticipates that it will be in full production by May, 1982. The mine expects to employ 12 continuous mining machines in its underground mining activity, 8 of which will normally be in operation on a 3 shift per day basis. This electrically powered mining equipment will be part of a continuously moving underground distribution system. The mine's anticipated electric load requirement is 7,000 KW of electricity at 34.5 KV.

2. The Order authorized CIPS to furnish service to Freeman's Crown 3 Mine in Macoupin County, Illinois and contemplated that the mine's natural evolution would require a continuously moving underground distribution system.

3. The electric service to that portion of the Freeman mine under the Arnold premises is part of the continuous movement of the underground distribution system of the mine and Crown 3 Mine's needs.

4. The same issues and the same parties in this proceeding were previously decided by Commission order in ESA 187 and affirmed on appeal by the Fourth District Appellate Court in *RECC v. Ill.Com.Com.*, 183 Ill.App.<sup>3d</sup> 647 (1983).

5. The issues raised by RECC in the instant complaint were decided in the previous litigation and RECC is now barred from raising those issues again in this proceeding. (See, *Osborne v. Kelly*, 207 Ill.App.<sup>3d</sup> 488, 152 Ill.Dec. 422 (1991).

WHEREFORE, Intervenor prays that the Commission enter an order finding that the issues raised in the instant complaint are barred by *res judicata* and for such other and further relief as is deemed just.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY

By:

  
Gary L. Smith



STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

FREEMAN UNITED COAL MINING COMPANY     )  
   )  
   )  
   )  
   )     Docket No. 01-0675  
RURAL ELECTRIC CONVENIENCE COOPERATIVE,)

vs.

**CROSS COMPLAINT**

COUNT I

NOW COMES, FREEMAN UNITED COAL MINING COMPANY ("Freeman"), through its attorney, Gary L. Smith, of Loewenstein, Hagen, & Smith, P.C., and for its Cross Complaint hereby alleges as follows

1. Paragraph 3 of the Service Area Agreement between RECC and CIPS attached as Exhibit 1 to the Complaint alleges in paragraph 3 as follows:

The parties hereto undertake to, and are obligated to furnish reasonable and adequate service to the consumers each is or may be entitled to serve under this Agreement, provided, however, this undertaking is solely for the benefit of the respective present and future consumers of each and may be enforced only by a present or prospective consumer of each, and only in accordance with the provisions of Section 9 of the Electric Supplier Act, approved July 2, 1965, insofar as Cooperative is concerned and only in accordance with the provisions of the Public Utilities Act insofar as Utility is concerned. (Emphasis added.)

2. Article 17 of the Public Utilities Act (220 ILCS 5/16-101, et seq.) is entitled the Electric Service Customer Choice and Rate Relief Act of 1997. Under said Act, Freeman is entitled to choose its electric supplier.

3. On or before October 1, 1999, Freeman was a retail customer whose average monthly maximum electrical demand during the six months of Freeman's highest monthly maximum demands in the 12 months ending June 30, 1999 equals or exceeds 4 megawatts.

4. On October 1, 1999, CIPS was lawfully providing electric utility services to Freeman at the Crown 3 Mine when Freeman's right to choose arose under the Electric Service Customer Choice and Rate Relief Act of 1997.

5. The Complaint filed by RECC is an attempt to make Freeman a captive customer of RECC so that RECC can extract exorbitant electrical revenues from Freeman, all in derogation of Freeman's right to choose under the Electric Service Customer Choice and Rate Relief Act of 1997.

6. Freeman has the absolute right to choose its electric supplier at the Crown 3 Mine including that portion of the mine under the Arnold premises.

WHEREFORE, Intervenor respectfully prays that the Commission declare CIPS as the utility authorized to serve the Crown 3 Mine under the Arnold premises.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY

By:

  
Gary L. Smith

Gary L. Smith-#2644029  
Loewenstein, Hagen, & Smith, P.C  
1204 South Fourth Street  
Springfield, IL 62703  
Phone: 217/789-0500  
Fax: 217/522-6047

### PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon of all parties to the above cause by enclosing the same in an envelope addressed to such party at their address as follows:

Michael W. Hastings  
Atty. for Soyland Power Cooperative,  
Inc.  
Post Office Box 3787  
Springfield, IL 62708-3787

Steven R. Sullivan, Vice President  
Central Illinois Public Service Company  
Post Office Box 66149  
St. Louis, Missouri 53166-6149

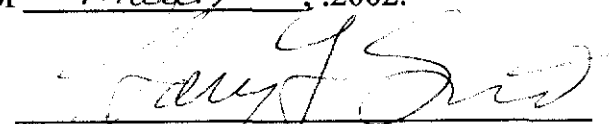
Scott C. Helmholtz  
Sorling, Northrup, Hanna,  
Cullen and Cochran, Ltd.  
Post Office Box 5131  
Springfield, IL 62705

Jerry Tice  
Grosboll, Becker, Tice & Reif  
101 East Douglas  
Petersburg, IL 62675

Robert J. Mill  
Central Illinois Public Service Company  
607 East Adams  
Springfield, IL 62739

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail

Box in Springfield, Illinois on this 12 day of March, 2002.

  
\_\_\_\_\_  
Gary L. Smith

STATE OF ILLINOIS            )  
  )  
COUNTY OF SANGAMON        )       SS

I, Walter Gregory, President of Freeman United Coal Mining Company, being first duly sworn on oath, depose and state that I have read the foregoing Answer and Cross Complaint, and that said answers are true and correct, to the best of my knowledge and belief, and for the matters for which Intervenor has stated it has insufficient knowledge to answer states that it is unable to answer as a result thereof.

Walter Gregory

Subscribed and sworn to before me, a notary public, this 12<sup>th</sup> day of March, 2002.

Patricia L. Graves

Notary Public

